

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

HEATHER BIRD, : CIVIL NO. 3:18-CV-2289  
:   
Plaintiff, :   
:   
v. : (SAPORITO, M.J.)  
:   
BOROUGH OF MOOSIC, et al., :   
:   
Defendants. :

**MEMORANDUM**

FILED  
WILKES BARRE  
FEB 28 2020  
PER MS  
DEPUTY CLERK

This is a civil rights action. In her amended complaint, the plaintiff, Heather Bird, alleges violations of her rights under the First Amendment of the United States Constitution through 42 U.S.C. § 1983. Before the court are the plaintiff's motion to limit an independent medical exam and require it to be filed under seal (Doc. 47), and her motion for a protective order (Doc. 48). Based upon the state of the record, we presume that the defendants want the plaintiff to submit to an independent medical examination by a doctor selected by the defendants. The defendants have not filed a motion seeking an order for an examination pursuant to Fed. R. Civ. P. 35(a)(2). The plaintiff is requesting that we issue a protective order precluding an expert medical examination.

## ***I. Legal Standards***

Fed. R. Civ. P. 35(a) permits the court to order a party, whose mental or physical condition is in issue, to submit to a physical or mental examination and to specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it. However, the order may be made “only on motion for good cause” and on notice to all parties and the person to be examined. Fed. R. Civ. P. 35(a)(2)(A). Also, Fed. R. Civ. P. 26(c) provides that upon motion by a party, the court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including specifying terms including time and place or the allocation of expenses for discovery. Fed. R. Civ. P. 26(c)(1)(B).

## ***II. Discussion***

A review of Rule 35 requires a motion by the party seeking the examination. Based upon the current state of the record and the lack of a formal motion, we are constrained to grant the plaintiff’s motion for a protective order without prejudice to the defendants’ right to file a motion under the requirements of Rule 35. However, we remind counsel for the parties that in many instances these matters are resolved by way of a

stipulation of counsel. *See generally*, Fed. R. Civ. P. 29. We encourage counsel to discuss the matter further and reach an acceptable solution to the issue. If counsel is unable to agree, the defendants may file their motion under Rule 35.

An appropriate order follows.

  
JOSEPH F. SAPORITO, JR.  
U.S. Magistrate Judge

Dated: February 28, 2020